

Model Traffic Policing Agreement Guidelines

The County Road Administration Board offers the following guidelines for County Commissioners faced with a decision to divert County Road funds for traffic policing by their County Sheriff. In so doing, they should be careful to carry out such a diversion in a manner that protects their legal responsibilities, and assures a clear understanding by all affected of the diversion use and limitations.

CRAB staff developed a model agreement to provide an option for those counties who determine that the priorities of government dictate a necessity to divert County Road Funds to traffic policing as permitted under state law.

The issues that should be considered are outlined herein.

Legal Requirements

The State Constitution, Section 40 Highway Funds (the 18th Amendment to the State Constitution), restricts the use of all fuel taxes collected by the state to "highway purposes". It goes on to define those purposes to include "policing by the state of public highways".

State Law, 36.82.010 RCW, creates a County Road Fund for road purposes only. The County Treasurer must deposit all fuel taxes received by the County in this fund. In addition, the County Road Tax must be deposited into this fund, unless the Board diverts those taxes.

These protections were set in place in recognition that Road Fund tax revenues provide for what is undoubtedly the most important public infrastructure system in existence. With this in mind, as well as concern for shrinking road dollars, it is important that any diversion be done with clear objectives, and that all affected recognize the trade-off involved.

Following this precedent, the Legislature, in 36.79.140 RCW, also determined that for a county to be eligible for the Rural Arterial Program, it must not divert any portion of the Road Fund levy for any purpose except traffic policing. Every county has accomplished valuable projects with RAP funds, and a loss of that revenue source would certainly not be desirable.

While counties may choose other methods of accomplishing a legal Road Fund diversion, the primary purpose of this recommended method is to assure that such decisions have both a sound foundation and a clear methodology. By so doing, the Board of County Commissioners and the County Sheriff can easily demonstrate that such a significant step in managing county resources is legal, visible, on purpose and accountable.

Responsibilities

There are two steps in the recommended method. First is to establish an agreement between the responsible elected officials, the County Commissioners and the Sheriff. As an independently elected official, the County Sheriff has no specific obligation under law to report his day-to-day activities to the Commissioners, much less the County Engineer. The Board on the other hand has a fiduciary responsibility for both the County Road Fund and the Sheriff's budget under the General Fund. This formal agreement sets a clear expectation, and a binding responsibility, that a diversion is for legal purposes, and perhaps more important, is accountable to the citizens paying for both services.

The second step is a Memorandum of Understanding between the Sheriff's Office and the County Engineer's office that spells out the day-to-day methods of carrying out the direction given in the agreement. This less formal document allows some latitude for the two offices to work out functional matters that are specific to their respective offices in a relatively simple manner.

Clearly, the Sheriff is the Chief Law Enforcement Officer of the County and by law has all of the attendant responsibilities. We would suggest that for the Engineer to try to step into these responsibilities generally would invite difficulties for both and potential liabilities for the County. Similarly, state law charges the County Engineer with managing County Roads and the County Road Fund. It would be equally difficult for the Sheriff to attempt to take on any of those responsibilities.

However, there are overlapping areas of responsibility when it comes to County Road issues and enforcement. For example, the County Engineer must assure that proper legal signing is placed on the County Roads so that the Sheriff may properly enforce the Uniform Traffic Code. As such, it is incumbent upon both to have a sound, respectful working relationship, and a clear understanding and appreciation for the others responsibilities. We can only emphasize this need, and encourage both to take the time to develop such a relationship. Each can then assist the other in their respective roles.

Implementation

Both the Agreement and the MOU are models. They are not required by law. However, we recommend them in that accountability and clarity are both excellent means of getting our work done efficiently, on purpose, and with the understanding and support of both the participants and the public.

As models, you are free to modify them according to your needs. Counties with large complex organizations may require more elements than those with simple smaller offices.

Agreement

The Agreement in particular should be considered carefully before modifying it. It contains both significant policy statements as well as a legal framework.

The list of inclusive items may certainly be modified, however care should be taken that the items are all truly traffic policing and/or road related. Otherwise, the legal protections of the agreement to divert funds are lost. Illegal diversions can result in criminal penalties, up to and including felony charges. Similarly, the list of items that the SMOU should contain can be expanded or reduced, depending on the needs of the two offices.

Finally, the reimbursement conditions and methods may be modified to meet a county's specific needs. In so doing, one should consider both the accountability issue as well as the requirements for proper auditable accounting procedures.

Sheriff's Memorandum of Understanding

The SMOU is intended to be the document that deals with the day-to-day operations of the two implementing offices. Being less formal than an agreement, the Sheriff and Engineer are free to work out issues between their offices that will make implementation of the agreement as simple and efficient as possible. In addition, they can easily modify the SMOU to meet changes in their offices, provided both offices agree. We have provided no specific format, only the list of items in the Agreement. Each County will have unique operational needs.

Communications

Perhaps the most critical issue is communications. If errors or misunderstandings occur, the necessary working relationships, and the effective use of the entire Agreement is jeopardized. Care should be taken to assure that clear lines of communications, 24 hours a day, 7 days a week, are established and understood by the various staff people who will be engaged in carrying out the agreement. We suggest the following items be included:

- Telephone, cell phone, and radio frequencies and call signs, coupled with use guidelines and protocols for:
 - Sheriff's Dispatch
 - CSO staff and Field Deputies
 - County Engineer's Office
 - County Road Supervisors

Use guidelines should be simple, and should provide general guidance on when and how emergencies should be handled as opposed to day-to-day coordination activities. Calling 911 to arrange a Deputy to do weight enforcement is not likely to make busy dispatchers particularly happy! On the other hand, a drunk speeding through a construction zone is an immediately life threatening situation.

Reimbursable Items

The amount and type of activity that the CSO will provide should also be clearly laid out. Not only does this provide public accountability, but more important in this context, it will clarify internal understanding what will and will not be a part of the provided services. Managing expectations in this manner helps greatly in maintaining good working relationships.

Along with that, spelling out the labor rates, agreeing on a simplified overhead rate for indirect costs, and agreeing on what types of direct cost expenses would be eligible for reimbursement helps both offices.

We suggest that for indirect costs, items clearly connected with the employee, regardless of the type of work that they do, be included. Those include by example, sick and annual leave, medical benefits, and L&I insurance. Elements common to law enforcement, for example uniforms and firearms, should not be included in these costs as their use goes beyond road related activities. A common overhead rate is about 40% of the base labor rate. By agreeing to a calculated (to keep the auditors happy) simplified indirect cost rate, billings are much simpler to do and understand.

Similarly, direct cost expenses that relate specifically to road activities should be eligible for reimbursement. For example, if there were specific training on construction zone activities that would be beneficial to CSO Deputies, registration costs and hotel rooms would be appropriate direct expenses.

Having stated these desirable options, the Sheriff and County Engineer will certainly recognize that the Model Agreement is laid out to establish a maximum amount of total funds available. Any methods that provide accountability and assurances that the services paid for are reasonably delivered should be satisfactory.

Exhibit 'A' is included, not as the only allowed billing form, but to demonstrate a relatively simple form that should be sufficient to meet the needs of this Agreement.

CRAB Assistance

As a complement to its oversight responsibilities, CRAB Staff represents many years of County Road experience in dealing with a wide variety of issues. Cooperation and coordination with other County offices is a significant part of that experience, as well as a solid understanding of legal issues and considerations. We much prefer to help you resolve questions and concerns before they become problems. In that effort, we offer our advance assistance should you choose to use this tool, and/or have questions or suggestions on its use.

In all cases, as CRAB does not provide legal advice, agreements and statutory interpretations should always be discussed with, and preferably approved by, your

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county legal counsel, typically the Prosecutor or a Civil Deputy Prosecutor. It is ideal if there is a Civil Deputy specializing in Public Works law.

Additional questions may be referred to CRAB.

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